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GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191		

EXAMINER	
SAFAVI, MICHAEL	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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The reply brief filed January 22, 2007 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Responsive to the reply brief under 37 CFR 41.41 filed on January 22, 2007, a supplemental Examiner's Answer is set forth below:

As to Appellant's "First Issue" as well as "Fourth Issue" within the reply brief, initially, Appellant appears to argue in the reply brief that the supplemental appeal brief does not set forth any specific meaning of "pre-applied adhesive". However, Appellant offers no other showing to support a meaning or definition of pre-applied. In fact, Azevedo has not been entered as evidence on the record. Thus, Examiner had replied that Examiner knows of no such restrictive definition of "pre-applied adhesive" that would preclude a reading of any ordinary adhesive or particularly, that pre-applied adhesive used within the Witex Co. '962 reference. Pre-applied does not specifically refer only to the particular adhesive described within Azevedo nor to what Appellant appears to be describing at the middle of page two of the reply brief. See for example, appealed claim 34, which merely sets forth a "pre-applied first layer" and a "pre-applied second layer". Examiner does not agree that either of "pre-applied first layer" and "pre-applied second layer" set forth any specific meaning of adhesive particularly, as argued by Appellant on page two of the reply brief.

As for Appellant's "Second Issue" within the reply brief: Examiner can only express that the Witex Co. '962 reference discloses an adhesive applied at the factory which then subsequently serves to, at a later point in time, fasten two boards one to another. Such certainly appears to fall within Appellant's expression of what constitutes a "pre-applied adhesive". It is not clear, otherwise, as to what Appellant is conveying with the statement, "the Examiner has failed to appreciate that the factory application of an adhesive is not a per se disclosure of a pre-applied adhesive or pre-applied substance". Clearly, Witex Co. '962 discloses use of a "pre-applied adhesive".

As for Appellant's "Third Issue" within the reply brief: Simply put, "some future point in time" can read on the point in time that the panels are connected after the "pre-applied adhesive" has been deposited on the panels. Further, Witex Co. '962 clearly describes an adhesive that is applied to the floorboard with subsequent activation to achieve bonding of adjacent boards. See for example, the translated disclosure of Witex Co. '962 as from the penultimate line on page 5 to line 6 on page 6. Witex Co. '962 even expresses the same problem to overcome in the art as Appellant's disclosure expresses. See for example, lines 1-6 on page 4 of the translation and again from line 19 of page 4 to line 9 of page 5. As for Appellant's emphasis of "at the factory", (found at line 14 on page 4 of the reply brief), anyone possessing ordinary skill in the building finishing art would certainly not extract that Witex Co. '962 proposes to join all floor elements at the factory for subsequent shipment of an entire floor area to the site. Finally, the claims on appeal are not directed to method. Rather, the claims on appeal

are directed to an article of manufacture. As such, any argument with regard to particular sequence of events would not serve to overcome the rejection over the applied prior art.

As for Appellant's "Fifth Issue" within the reply brief: The Examiner's Answer clearly sets forth a reason, (motivation), for combining references to arrive at the claimed invention with such reason stemming from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art. See the reasons to combine in each of the applied rejections.

Appellant argues,

"each of the applied documents is silent with regard to a number of recited features".

Though it may be that no single reference has all recited features the references as combined serve to establish all the elements recited within the claims on appeal.

Appellant goes on to argue,

"Moreover, none of the documents teaches or suggests modifying the structure or operation of AT 405 560 in the manner asserted by the Examiner."

Because the art of record fails to provide any reasonable explanation why one ordinarily skilled in the art would utilize such an arrangement, and/or fails to disclose or suggest the problems that such an arrangement would address, Appellant submits that the art of record fails to provide the requisite motivation or rationale as to why one ordinarily skilled in the art would modify AT 405 560 to include features of any of the secondary references in the manner asserted by the Examiner. That is, Appellant submit that because the Examiner has not set forth any basis or reason found in the art of record for combining these documents, the instant rejection has no basis in the art of record, such that the rejection is improper and should be withdrawn."

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However, as is recognized by Appellant on page 5 of the reply brief, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art. In this case, one having ordinary skill in the art would recognize from Witex Co. '962 to employ an adhesive to edges of flooring elements with the applied adhesive being one that can be activated at some later point in time. And, each of Scarlett, Keller et al. and Turner has been utilized to teach, (show), the feature of applying an adhesive to a building member joint which joint possesses an interlocking feature. Meanwhile, Roesch has been utilized to show and teach an application of a two component adhesive within a joint of a structural element wherein "the pre-applied first layer comprises one component of a two-component glue and wherein the pre-applied second layer comprises another component of the two-component glue". As such, the applied prior art documents, taken together as proposed in the rejections on appeal, unmistakably show all of the limitations of the rejected claims. As well, the motivation to combine undoubtedly stems from a teaching, suggestion or inference in the applied prior art as a whole. The factual basis to which Appellant alludes is clearly set forth within the applied prior art. Thus, Examiner has supplied the factual basis for each rejection on appeal and has not resorted to any speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis.

For the above reasons, it is believed that the rejections should be sustained.

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Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:



Respectfully submitted,



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 3673

M. Safavi
March 29, 2007